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Letter Ruling 93-4: Application of Residential Exemption for Electricity to Common Areas and Unoccupied Apartments in Residential Apartment Complexes

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April 20, 1993

You have requested a ruling on behalf of the Town ***** , Office of Light and Power Department, concerning the applicability of Massachusetts sales tax to certain sales of electricity to landlords of residential apartment complexes.

FACTS

The Town ***** , Office of Light and Power Department, separately bills landlords of residential apartment complexes for electricity used for the following purposes:

- (1) Lighting the common areas of apartment complexes, e.g. interior hallways, exterior walkways and parking lots;
- (2) In connection with the central heating system; and
- (3) Service supplied to unoccupied apartments between rentals.

While no tenant has been billed for sales tax on electricity used in his or her individually metered apartment, you have been billing landlords for sales tax on electricity used for the purposes described above.

DISCUSSION

Massachusetts imposes a five percent sales tax on all sales at retail of tangible personal property in Massachusetts by any vendor unless an exemption applies. G.L. c. 64H, §§ 2, 6. Tangible personal property includes electricity. G.L. c. 64H, § 1. Sales of electricity are exempt from tax when the

sales are made to certain exempt purchasers or when sales are made for an exempt use, such as residential use. The pertinent exemption is set forth in G.L. c. 64H, § 6(i).

In determining if this exemption applies, the Department [of Revenue] generally considers the ultimate use of the electricity. The exemption for sales of electricity for residential purposes includes the use of electricity in and around apartments for the safety or convenience of residential tenants. Electricity used in an unoccupied apartment is exempt as long as the apartment is intended as a residence and is not otherwise used.

CONCLUSION

Electricity sold to landlords for lighting common areas of exclusively residential apartment complexes,^[1] for use in operation of the central heating system in such a complex, and for service to unoccupied apartments in such complexes is exempt from sales and tax under G.L. c. 64H, § 6(i).

If a vendor has collected tax that is not due, the vendor may reimburse the customer and then apply to the Commissioner for an abatement on Form CA-6. Alternatively, the customer may apply directly to the Commissioner for an abatement by submitting an abatement application on Form CA-6 along with a power of attorney (Form M-2848) form from the vendor. See 830 CMR 62C.37.1.

Very truly yours,

/s/Mitchell Adams

Mitchell Adams
Commissioner of Revenue

MA:HMP:ecl

LR 93-4

^[1] See TIR 90-7 for a discussion of mixed residential and commercial use buildings and the small business exemption.